

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIAM F. DAVIS, III,)	C. A. No. 04-209-SLR
Plaintiff,)	
v.)	TRIAL BY JURY
)	DEMANDED
CORRECTIONAL MEDICAL SERVICES,)	
INC., <u>et al.</u> ,)	
)	
Defendants.)	

**MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., TO
DEEM DISPOSITIVE MOTION UNOPPOSED AND TO ENTER JUDGMENT IN
FAVOR OF CORRECTIONAL MEDICAL SERVICES, INC.**

Defendant, Correctional Medical Services, Inc. ("CMS"), through its undersigned attorneys, hereby moves this Honorable Court to consider CMS' Renewed Motion to Dismiss as unopposed and to enter judgment in its favor and against plaintiff pursuant to FRCP 54(b) and, in support thereof, avers as follows:

1. On April 4, 2007, CMS filed a Renewed Motion to Dismiss Plaintiff's Complaint and Amended Complaint. D. I. #70.
2. On June 22, 2007, the Court issued an Order, setting a briefing schedule on CMS' Motion which required plaintiff to file his Answering Brief on July 20, 2007. D.I. #76.
3. A review of the docket reflects no filing of an Answering Brief by plaintiff and the undersigned counsel for CMS has not received plaintiff's Answering Brief by any means of delivery. Plaintiff has also not requested an extension of time to file his Answering Brief.
4. Because plaintiff has failed to file an Answering Brief in accordance with the Court Order setting the briefing schedule for its Motion to Dismiss, CMS respectfully requests this Honorable Court to treat its Dispositive Motion as unopposed, to grant it and to enter the attached Order, dismissing plaintiff's Complaint and Amended Complaint against CMS with

prejudice and entering judgment in favor of CMS and against plaintiff pursuant to Federal Rule of Civil Procedure 54(b).

WHEREFORE, defendant, Correctional Medical Services, Inc, respectfully moves this Honorable Court to enter the attached Order, dismissing plaintiff's Complaint and Amended Complaint against it with prejudice and entering judgment in favor of defendant, Correctional Medical Services, Inc., and against plaintiff pursuant to Federal Rule of Civil Procedure 54(b).

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: /s/ Kevin J. Connors
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Attorney for Defendant,
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Dated: August 6, 2007

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